IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 28422 of 2006(H)

LAR.6/2003 of SUB COURT, VADAKARA
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PETITIONER:

HOSDURG SERVICE CO-OPERATIVE BANK LTD. NO.1063, HOSDURG, REPRESENTED BY ITS SECRETARY, SHRI. K.KAMALAKSHA.

BY ADV. SRI.A.DINESH RAO

RESPONDENT:

THE SPECIAL TAHSILDAR(LAND ACQUISITION), NATIONAL HIGHWAY, KANNUR.

BY GOVT. PLEADER SMT. R. BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Petitioner's Exts:

Ext.P1 true copy of the claim statement filed by the petitioner and dated 14.7.03.

Ext.P2 true copy of IA No.190/06 filed by the Assistant Secretary of the Co.op Bank and dated 6.2.2006.

Ext.P3 true copy of IA No.326/2006 filed by the petitioner and dated 4.3.2006.

Ext.P4 true copy of the order passed in Ext.P3 (IA 326/2006) and dated 26.6.2006.

Ext.P5 true copy of IA No.629/2006 and dated 29.6.2006.

Ext.P6 true copy of the order dated 9.8.2006 passed in IA 629/2006

M.N.Krishnan, J.

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W.P(C).No.28422 of 2006

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Dated this the 28th day of September, 2007.

JUDGMENT

This Writ Petition is filed challenging the order of the Subordinate Judge, Hosdurg by Exts.P4 and P6. It is a land acquisition reference. When the matter was posted for trial in the list, there was no representation for the claimant and therefore the court refused adjournment and disallowed any enhancement of compensation. Subsequently, the claimant filed an application under Order 9 Rule 9 of C.P.C. for restoration of the case. By the decision of the Apex Court and this Court, it is clearly settled that the land acquisition court has no power to dismiss a reference for default. It is also held in very many decisions that even in the absence of the claimant, the court is bound to look into the factual aspects and pass award. In other words, a duty is case upon the court to apply its mind and dispose of the cast in accordance with law. But unfortunately, in

this case, the court below has not applied its mind and had just disposed of the case on account of the absence of the claimant.

2. Therefore, it is a fit case where jurisdiction under 227 of the Constitution of India has to be exercised and therefore, I set aside the order passed by the learned Subordinate Judge in L.A.R. No.6 of 2003 and direct the court to restore it to file and dispose of the matter in accordance with law after permitting the claimant as well as the Government to adduce evidence in support of their respective contentions. If the court finds that there has been willful default on the part of the claimant, the court is at liberty to consider the question of awarding interest on the amount for the said period of laches on the part of the claimant. The court shall dispose of the matter as expeditiously as possible.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

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